THE HONOURABLE SRI JUSTICE C.V. RAMULU

W.P.Nos. 33139, 33167, 33255, 33265, 33271, 33306 and 34207, 34231 of 1997, 6912, 7066, 7080, 7243, 7958 and 7984 of 2000

DATED: 10-10-2007

Between:

W.P.No. 33139 of 1997

T. Balaguravaiah

.. Petitioner

and

Industrial Tribunal, Hyderabad-I, Hyderabad and another.

.. Respondents

W.P.No. 33167 of 1997

Y. Thirupalu

.. Petitioner

and

Industrial Tribunal, Hyderabad-I, Hyderabad and another.

.. Respondents

W.P.No. 33255 of 1997

K. Nageshwara Rao

.. Petitioner

and

Industrial Tribunal, Hyderabad-I, Hyderabad and another.

.. Respondents

W.P.No. 33265 of 1997

Ch. Brahmam

.. Petitioner

and

Industrial Tribunal, Hyderabad-I, Hyderabad and another.

.. Respondents

W.P.No. 33271 of 1997

Ch. Koti Reddy

.. Petitioner

and

Industrial Tribunal, Hyderabad-I, Hyderabad and another.

.. Respondents

W.P.No. 33306 of 1997

G. Nagi Reddy

.. Petitioner

and

Industrial Tribunal, Hyderabad-I, Hyderabad and another.

.. Respondents

W.P.No. 34207 of 1997

D. Pedda Ramaiah

.. Petitioner

and

Industrial Tribunal, Hyderabad-I, Hyderabad and another.

.. Respondents

W.P.No. 34231 of 1997

B. Rama Rao

.. Petitioner

and

Industrial Tribunal, Hyderabad-I, Hyderabad and another.

.. Respondents

W.P.No. 6912 of 2000

M.Dashinachary

.. Petitioner

and

Industrial Tribunal, Hyderabad-I, Hyderabad and another.

.. Respondents

W.P.No. 7066 of 2000

Kocharla Sourilu

.. Petitioner

and

Industrial Tribunal, Hyderabad-I, Hyderabad and another.

.. Respondents

W.P.No. 7080 of 2000

P. Pitchaiah

.. Petitioner

and

Industrial Tribunal, Hyderabad-I, Hyderabad and another.

.. Respondents

W.P.No. 7243 of 2000

A. Sree Ramulu

.. Petitioner

and

Industrial Tribunal, Hyderabad-I, Hyderabad and another.

.. Respondents

W.P.No. 7958 of 2000

B. Chennaiah

.. Petitioner

and

Industrial Tribunal, Hyderabad-I, Hyderabad and another.

.. Respondents

W.P.No. 7984 of 2000

B. Pedanna

.. Petitioner

and

Industrial Tribunal, Hyderabad-I, Hyderabad and another.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

W.P.Nos. 33139, 33167, 33255, 33265, 33271, 33306, 34207 and 34231 of 1997, 6912, 7066, 7080, 7243, 7958 and 7984 of 2000

COMMON ORDER:

In all these writ petitions, the short question that falls for consideration is whether the reference made by the Government of India under Section 10 (1) (d) of the Industrial Disputes Act, 1947 (for short 'the I.D. Act'), for adjudication of the respective industrial disputes raised by the workmen, is hit by res judicata in view of the earlier proceedings between the parties under Payment of Wages Act.

It appears, in the year 1974, the petitioners were originally engaged as labour by a Contractor, who was awarded labour contract by the 2nd respondent Corporation, for working in the Modern Rice Mill of Sathenapalli village. The contractor rendered services for about one year and thereafter absconded from work in the year 1975. Subsequently, the officers of the 2nd respondent Corporation engaged the petitioners as labour directly. However, the Corporation selected one Subba Rao as Muttah Maistry for distributing wages to the 25 workmen including the petitioners. The Corporation has also collected provident fund contributions and deposited the same with the provident fund authorities. However, in the year 1981, again the Corporation has introduced contract labour system and made the petitioners and other workers as contract labour. According to the petitioners, this

procedure adopted by the management was unfair labour practice and they are the workmen of the 2nd respondent Corporation. The petitioners also contended that the Corporation issued a circular, dated 06.05.1987, for regularizing the services of the casual employees, who have put in three months of service. The District Manager has recommended the names of the petitioners also for regularization. The Corporation has also issued another circular, dated 24.08.1992, calling for the particulars of the casual labour; but denied the regularization of their services on the ground that they are contract labour. When the services of the petitioners were sought to be terminated, they raised individual industrial disputes and the same were referred to the Industrial Tribunal, under Section 10 (1) (d) and 2-A of the I.D. Act, for adjudication of the following issue in all disputes:

> "Whether the petitioner was the workman of FCI at Modern Rice Mill, Sathenapalli, Guntur District, during the period of 6 years from 1975-81? If so, whether the action of the management of FCI Regional Office, Hyderabad in terminating the services of the workman in the year 1981 and in denial to regularize his services in accordance with Circular No.EF-1 (4)/85 Vol.II dt. 6.5.87 and E.P.1-(3)/91 Vol.II dated 24.8.92 is legal and justified? If not what relief the workman is entitled to?"

Before the Tribunal, the management filed a counter stating that the petitioners were never employed directly by the respondent Corporation and that when one D.V. Subba Rao, contractor absconded from 15.07.1975, the work of handling and transporting the food grains was entrusted to one Subbayya, a Muttah Maistry on contract basis on the same terms and conditions. The said Subbayya was receiving the money and paying it to the labour engaged by him. The Provident Fund Commissioner demanded the Corporation to pay

the contributions. The Corporation paid the contributions as per the provisions of the Employees Provident Fund Act and deducted the amount from the bills of the contractor and that itself will not create any relationship of master and servant between the management and the workmen. Further, the Modern Rice Mill at Sathenapalli is not in existence and it was closed long back.

On the basis of the above pleadings, in all the disputes, the following four points were framed by the Industrial Tribunal for consideration:

1) Whether the petitioner was employed in the Modern Rice Mill, Sattenapalli owned by the Food Corporation of India from 1975 to 1981?
2) Whether the action of the Management in terminating the services of the workman in 1981 is justified?
3) Whether the denial of the respondent in regularizing the services of the petitioner is justified?
4) The claim of the petitioner is barred by res judiciata?

Insofar as points 1 to 3 are concerned, the Tribunal gave a finding in favour of the petitioners-workmen. However, insofar as point No.4 i.e. whether the claim of the petitioners is barred by res judicata, the Tribunal held that earlier the petitioners have approached the Authority under Payment of Wages Act, claiming leave wages etc. on the ground that they are direct employees of the Corporation and, while deciding the matter, the Authority under the Payment of Wages Act held that there was no relationship of employer and employee between the parties and therefore the petitioners were not entitled for any wages as claimed. Further, the Tribunal held that the said decision of the Authority under the Payment of Wages Act attained finality and, therefore, the claim is barred by res judicata. Finally, it was held that

the petitioners are not entitled to any relief due to operation of principles of res judicata.

There is no necessity of going into all the details.

It is suffice to notice that the basis on which the Tribunal held that the issue as to the relationship of master and servant between the parties has already attained finality seems to be not correct. The petitioners herein filed P.W.Case No.28/77 before the Authority under the Payment of Wages Act and the same was decided on 31.07.1978 holding that no relationship of employer and employee was existing between the parties and, therefore, the respondents therein cannot be held liable for the claims made by the petitioners. Aggrieved by the said order, the petitioners carried the matter in appeal, being C.M.A.No.48/1978, before the I Additional District Judge, Guntur. The appellate Court, after detailed consideration of the matter, concurred with the findings recorded by the Authority under Payment of Wages Act and negated the claim of the petitioners/appellants on the ground that there was no relationship of master and servant between the parties. Challenging the said order of the appellate authority, the petitioners further carried the matter in revision before this Court in Civil Revision Petition No.3654 of 1982. This Court, on 09.07.1986, after examining the facts of the case held as under:

> "This revision arises under the Payment of Wages Act (Act No.4 of 1936). The petitioners filed an application under section 15 of the Act claiming certain emoluments as employees in the respondent Corporation. Both the courts below held that there is no jural relationship of employer and employee. Sitting in revision against the appellate order, I am examining the findings of the appellate Court within the scope of the revision. The appellate court took the view that there is

no relationship of employer and employee and hence the application filed by the petitioners is not maintainable. The findings recorded by the appellate court are not and could not be seriously disputed by the learned counsel for the respondent. But the only contention raised by him is that the petitioners are appointed through a contractor for some time and a maistry for some other time and the wages were paid to the contractor or the maistry and hence there is no direct relationship of employer and employee. It is true there is no direct jural relationship of employer and employee. But the law does not require that such relationship must be established. It is enough if the petitioners' services are utilized by the respondent-Corporation and they are working in the unit. An identical question was examined by the Supreme Court in HUSSAIN BHAI VS. THE ALATH FACTORY TEZHILALI UNION AND OTHERS (1) 1978 A.I.R. Supreme Court 1410. The principles laid down in that case are clearly applicable to the facts of the present case. Once the petitioners are employed by the respondent unit whether directly or indirectly and the unit is liable to pay wages to the petitioners and in fact paid them, it is difficult to say that the application filed by them is not maintainable.

I am not going into the merits of the case that is whether the payments were already made through a third party, say the contractor or the maistry, shall be taken into account. Whether such payment absolves the liability of the Corporation is quite a different question which the authorities are bound to enquire into and give a finding thereon on the evidence available on record. Since the appellate court dismissed the appeal on the ground that the application of the petitioners is not maintainable, I set aside the impugned order and direct the appellate authority to make an enquiry afresh and pass orders on merits.

The counsel for the respondent urged that some of the petitioners died and some of them are not working in the unit. It is also urged by him that some of the claims made by the petitioners are not maintainable and are not cognizable by the

> authorities sitting under Payment of Wages Act. The said questions can be raised before the appellate authority and I am sure they are bound to make the necessary enquiry and give a finding whether the said claims are sustainable before them under the provisions of the Act."

While holding as above, this Court remanded the matter to the appellate authority for deciding the matter on merits as to the exact amounts liable to be paid by the Corporation. Ofcourse, it appears, though the matter was remanded, it was not pursued thereafter and, therefore, the very appeal was dismissed, but the finding that there was relationship of master and servant attained finality since the Corporation did not make any challenge to the said findings in the order, dated 09.07.1986, in C.R.P.No.3654 of 1982.

Under these circumstances, I am of the opinion that the Industrial Tribunal erred in not properly appreciating the facts placed before it and giving a finding that the claim is hit by res judicata as the Authority under Payment of Wages Act found that there was no relationship of master and servant between the parties. It may be interesting to notice that no challenge is made to the other three points answered in favour of the petitioners in the I.Ds., and all the claims were dismissed only on the ground that they are hit by res judicata. Further, it may be noticed that the petitioners are governed by the rules made under the A.P. Muttah, Jattu, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1976 (for short 'the Act'). Section 2 (4) of the Act deals with the definition of 'employer', which reads as under:

> 'employer' in relation to any unprotected worker engaged by or through contractor, means the principal employer and in relation to any other unprotected worker, the person who has ultimate control over the affairs of the establishment and

includes any other person to whom the affairs of such establishment are entrusted, whether such a person is called an agent, manager or is called by any other name prevailing in the scheduled employment.

Further, Section 2 (16) of the Act deals with the definition of 'worker' and the same reads as under:

'worker' means a person who is engaged or to be engaged directly or through any agency, whether for wages or not, to do manual work in any scheduled employment, and includes any person not employed by any employer or a contractor, but working with the permission of or under agreement with the employer or contractor, but does not include any member of the family of an employer.

Further, Section 19 of the Act reads as under:

"**Application of Payment of Wages Act to Workers:-** (1) Notwithstanding anything in the Payment of Wages Act, 1936 (hereinafter referred to in this section as 'the said Act'), the Government may, by notification, direct that all or any of the provisions of the said Act or the rules made thereunder shall apply to all or any class of unprotected workers employed in any scheduled employment to which this Act applies with the modification that in relation to unprotected workers, employer shall mean where a Board makes payment of wages to any such worker, the Board, and in any other case, the employer, as defined in this Act and on such application of the provisions of the said Act an Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of the enforcement of such provisions of the Act within the local limits of his jurisdiction.

(2) The Government may, only if the Advisory Committee so advises, by a like notification, cancel or vary any notification issued under sub-section (1).

From a combined reading of the above mentioned three Sections, it is clear that an employer includes a principal employer and a workman includes the petitioners herein, and further Payment of Wages Act is also applicable apart from any scheme that may be notified by the Government in this regard. Thus, there is relationship of master and servant between the parties and a petition under the Payment of Wages Act is also maintainable.

For all the above reasons, I am of the opinion that the claim of the petitioners, as held by the Industrial Tribunal, is not hit by the doctrine of res judicata. Therefore, the findings recorded by the Tribunal against point No.4 are liable to be set aside and are, accordingly, set aside, and in view of the findings recorded against point Nos.1 to 3 in the I.Ds, the claim petitions are allowed and award is passed in favour of the petitioners accordingly.

The writ petitions are, accordingly, allowed. No order as to costs.

C.V. RAMULU, J

10th October, 2007.

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